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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Petition of Ameritech For Modification Of Certain LATA Boundaries In Ohio	)	CC Docket No. 96-159 NSD-L-96-19

COMMENTS OF AT&T CORP. ON AMERITECH'S APRIL 20, 1998 SUBMISSION

Pursuant to the Commission's February 17, 1998 letter,[1] AT&T Corp. ("AT&T") hereby submits its reply to Ameritech's April 20, 1998 request for modification of certain LATA boundaries in the state of Ohio ("Further Submission"). As it did in its initial comments in this proceeding,[2] AT&T addresses a single issue in this pleading: Ameritech's claim that § 271(b)(4) of the 1996 Act authorizes Ameritech and Western Reserve Telephone Company ("Western") to enter into an arrangement by which those firms become the only carriers permitted to carry on a direct-dialed basis what is currently interLATA traffic originating in three Ohio exchanges, without first obtaining a modification of LATA boundaries from the Commission. As AT&T demonstrated in its initial comments, Ameritech's claim cannot be credited.

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1 Letter from Geraldine A. Matise, Chief, Network Services Division, Federal Communications Commission, to Alan N. Baker, Ameritech, February 17, 1998 ("February 17th Letter").

2 Comments of AT&T Corp., filed July 11, 1997 in Petition Of Ameritech For Modification Of Certain LATA Boundaries in Ohio, CC Docket No. 96-159, NSD-L-96-19 ("AT&T Initial Comments").

Under the instant proposal, traffic originating in the Aurora, Northfield and Twinsburg exchanges, all of which are served by Western and are associated with the Cleveland LATA, would be carried by Western to its Hudson exchange, which is associated with the Akron LATA. From the Hudson exchange, traffic would be routed to Ameritech's Akron exchange, in the Akron LATA. This Extended Local Calling Service ("ELCS") plan would be provided on a one-way, non-optional, measured-rate basis.[3]

As AT&T explained in its initial comments, in supervising the divestiture of the Bell System, the District Court oversaw a process by which independent telephone company ("ITC") exchanges were deemed to be "associated" or "not associated" with adjacent LATAs. ITC exchanges were associated with LATAs only if they met the same rigorous "community of interest" standards used to define the LATAs themselves, and traffic originating in a particular ITC exchange is regulated as if it originated in the LATA with which that exchange is associated.

If an ITC exchange is associated with a particular LATA, then telecommunications between those two areas is deemed intraLATA traffic and the BOC incumbent may carry it prior to obtaining in-region interLATA authority pursuant to § 271. Conversely, if an ITC exchange is not associated with a given LATA, then calls between the LATA and that exchange are considered interLATA, and may not be carried by the BOC incumbent until it obtains § 271

3 As the Commission's February 17th letter recognizes (p. 2), "measured rate ELCS arrangements may have an anticompetitive effect because they are similar to the toll service ordinarily provided on a competitive basis by the interexchange carriers." Although the Commission specifically indicated its concern with the fact that the ELCS proposal at issue is not a flat rate arrangement, Ameritech's Further Submission nowhere attempts to justify this aspect of the plan. Similarly, Ameritech fails to address the Commission's concern that "[t]he proposed ELCS involves substantially more access lines than we have seen in other ELCS petitions," despite the fact that the February 17th letter directed it to discuss "whether the number of access lines here is appropriate for granting the requested relief." (pp. 2-3).

authority for the relevant state.[4] Accordingly, the calls that would be subject to the instant ELCS proposal today are interLATA traffic. Callers in the Aurora, Northfield and Twinsburg exchanges seeking to place calls to numbers in the Akron LATA currently can choose to have those calls carried on a "1+" basis by any one of hundreds of IXCs, each competing to offer the most attractive package of rates, options and services.

Ameritech argues that § 271(b)(4) authorizes the proposed ELCS plan. That section provides that "Nothing in [§ 271] prohibits a Bell operating company or any of its affiliates from providing termination for interLATA services, subject to Subsection (j)."[5] The Further Submission seeks to justify Ameritech's interpretation of § 271(b)(4) by discussing only its role in "terminating" the calls at issue, rather than considering the entire proposed ELCS arrangement. However, this myopic focus on Ameritech's role is essentially irrelevant to the issues before the Commission.

AT&T does not disagree that Ameritech may receive interLATA traffic from an IXC at a single point of presence ("POP") in a LATA, and then provide the transport necessary to terminate calls within that same LATA. But by limiting its discussion only to the services Ameritech provides <u>after</u> Western delivers traffic to Ameritech's Akron exchange, the Further Submission simply abdicates its burden of justifying the instant ELCS plan. What is at issue in this proceeding is not merely Ameritech's role in "terminating" the traffic at issue, but whether the proposed <u>arrangement</u> between Western and Ameritech is authorized by § 271(b)(4). It is plain that the ELCS scheme at issue is not contemplated by § 271 and cannot be reconciled with the equal access requirements of § 251(g).

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4 <u>See generally</u> AT&T Initial Comments, pp. 2-3.

5 For a discussion of the significance of Section 271(j), see AT&T Initial Comments, p. 4, n.6.

As AT&T showed in its initial comments, § 271(b)(4) was intended solely to clarify that the BOCs could terminate within their territories those out-of-region, incidental and interLATA calls that the 1996 Act authorizes them to carry. In the absence of § 271(b)(4), Ameritech would be prohibited by § 271(b)(1) from "provid[ing] interLATA services originating in any of its in-region states." Section 153(42) defines "interLATA service" as "telecommunications between a point located in a local access and transport area and a point located outside such area." Thus, without a specific grant of authority to terminate its own authorized interLATA traffic, § 271(b)(1) arguably would prohibit a BOC from offering services that it is otherwise authorized to carry, but which terminate in its region. There is no evidence of any kind that Congress intended § 271(b)(4) to expand the BOCs' authority to handle in-region interLATA traffic beyond that explicitly granted in the 1996 Act.

Unless the Commission elects to modify the boundaries of the Cleveland and Akron LATAs pursuant to § 3(25), the instant ELCS proposal would permit Western and Ameritech jointly to establish an arrangement whereby that ITC aggregates traffic from exchanges that the District Court determined should not be associated with a particular LATA, transports them to a different exchange that is associated with that LATA, and then delivers them to a BOC exchange inside that LATA. This result would subvert the entire purpose of the Modification of Final Judgment's ("MFJ") "association" regime by making the LATA in which a call originates irrelevant. AT&T does not dispute that Western is permitted to carry interLATA calls. What is at issue here, however, is not merely the carriage and termination of interLATA calls, but whether § 271(b)(4) permits Western and Ameritech to gain exclusive control over interLATA traffic simply by routing it through an exchange associated with another LATA.

Although the Further Submission adverts repeatedly to the legal significance of the point at which a call originates, it never addresses the fundamental point that the calls at issue originate in a LATA other than the one in which they terminate. The fact that the calls in question would be routed through Western's Hudson exchange, which is associated with the Akron LATA, before being delivered to Ameritech's Akron exchange is utterly irrelevant to the Commission's inquiry. Any other conclusion would require the Commission to rule that so long as an ITC is capable of transporting traffic to a particular exchange, then a BOC could treat that traffic as if it originated there, rendering the actual point at which the call originates legally irrelevant. At bottom, Ameritech contends that an ITC and a BOC jointly can transmogrify what is now in-region interLATA traffic into "intraLATA" traffic simply by routing calls to an exchange other than the one in which they originated, thus permitting the BOC to capture potentially significant volumes of what are now -- and under the MFJ were intended to be -- in-region interLATA calls.[6]

Under Ameritech's reading of § 271(d)(4), if a BOC and an ITC agreed, in a state that had not instituted intraLATA dialing parity, to "convert" interLATA traffic into "intraLATA" telecommunications by routing them through another exchange, then no other carrier would be able to handle such calls on a "1+" basis even in the absence of an ELCS plan. In a state in which customers could presubscribe to an intraLATA toll carrier, an ITC and BOC could insulate such

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[6] The Further Submission argues (p. 6) that the "outcome" of grant of its Petition "would be no different" than other cross-LATA EAS routes approved by the Commission and the MFJ court. This claim is disingenuous at best. When the Commission has in the past approved a cross-LATA EAS routes, it has done so by modifying LATA boundaries pursuant to specific procedures it has established under § 3(25). In stark contrast, Ameritech claims that the instant ELCS arrangement does not even require Commission approval.

purported "intraLATA" traffic from competition (except on a dial-around basis) by persuading a state commission to impose a mandatory ELCS plan such as the one at issue here.[7]

Finally the Further Submission gives short shrift to the February 17th letter's request that it address the implications of § 251(g)'s equal access requirements on the instant ELCS proposal,[8] devoting just one paragraph to that subject. Section 251(g) expressly preserves the same equal access obligations that applied to carriers prior to enactment of the 1996 Act, "until such restrictions and obligations are explicitly superseded by regulations prescribed by the Commission." Under the Commission's rules, Western and other ITCs must permit IXCs to carry interLATA traffic originating in their exchanges on a "1+" basis. Ameritech argues that merely by routing traffic through another exchange, an ITC obtains the right to send all direct-dialed traffic terminating in a particular LATA to the incumbent BOC, rather than permitting other carriers to compete to carry those calls on a direct-dialed basis. As AT&T showed in its initial comments, Ameritech's reading of § 271(b)(4) simply cannot be reconciled with the Commission's longstanding equal access regime, or with the provisions of the 1996 Act that explicitly preserve those requirements.

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7 The Further Submission also argues (p. 8) that the Commission should approve the instant arrangement because Western, as the originating carrier, rather than Ameritech will receive end users' payments for the calls affected by the proposed ELCS arrangement. This claim ignores the fact that diverting revenues away from IXCs and to Western by mandating that callers use that LEC's services is as anticompetitive as would be diverting such revenues to a BOC. Moreover, Ameritech fails to mention that it will obtain a guaranteed source of terminating access revenues or reciprocal compensation payments via the instant scheme, whereas an IXC carrying calls from the affected exchanges might elect to utilize, to the extent possible, the services of a competitive access provider ("CAP").

8 <u>See</u> February 17th letter, p. 3.

Ameritech first responds to AT&T's equal access arguments by making the unsupported claim that "there is no violation of equal access involved here."[9] This statement is sheer *ipse dixit*, and provides no basis for the Commission to approve the instant ELCS proposal.

The Further Submission then contends that the existing equal access regime has become "obsolete" and should be amended[10] -- a claim which necessarily concedes that the proposed ELCS arrangement would violate current equal access requirements. This contention finds no support in the text of the 1996 Act, however. Section 251(g) continues "the same equal access and nondiscriminatory interconnection restrictions and obligations" that applied as of the date of its enactment "under any court order, consent decree, or regulation, order, or policy of the Commission." This explicit, wholesale preservation of all aspects of equal access makes plain that Congress did not believe the 1996 Act somehow rendered those provisions outmoded.

In support of its claim that the 1996 Act has somehow rendered equal access unnecessary, Ameritech argues only that because the Act places great emphasis on the point at which a call originates, the Commission should not concern itself with the services Ameritech offers in providing termination.[11] But Ameritech's emphasis on "origination" is unavailing in light of the fact that it is a party to the proposed ELCS arrangement, and the calls at issue here originate in a LATA other than that in which they terminate. Calls from the Aurora, Northfield and Twinsburg exchanges to the Akron LATA would have been deemed interLATA calls under the MFJ, and indisputably are today interLATA calls under the 1996 Act. As shown above, Ameritech's effort to focus only on the services which it provides in terminating calls under the

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9 Further Submission, p. 15.

10 See id., p. 15.

11 See id., pp. 15-16.

proposed ELCS plan fails even to address the illegality of that arrangement as whole. Section 271(b)(4) plainly does not permit Ameritech to enter into an arrangement with an ITC that allows that ITC to flout its fundamental equal access obligations by appropriating interLATA traffic exclusively to itself.[12]

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12 Even if there were any merit in Ameritech's suggestion that the equal access regime should be amended to permit arrangements such as the instant ELCS proposal (as AT&T believes there is not), § 251(g) explicitly directs that those requirements can only be "superseded by regulations prescribed by the Commission." Accordingly, the Commission could not authorize the instant ELCS scheme until it completed a rulemaking to amend the current equal access requirements. Cf. Perales v. Sullivan, 948 F.2d 1348, 1356 (2d Cir. 1991) (holding statutory requirement that certain Medicaid claims must be in form that HHS "shall by regulation prescribe" required that agency to proceed by rulemaking).

CONCLUSION

For the reasons given above and in AT&T's Initial Comments, the Commission should reject Ameritech's interpretation of § 271(b)(4) and rule that the instant ELCS proposal may not be implemented absent a modification of LATA boundaries pursuant to § 3(25).

Respectfully submitted,

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May 11, 1998

CERTIFICATE OF SERVICE

I, Terri Yannotta, do hereby certify that on this 11th day of May, 1998, a copy of the foregoing "Comments of AT&T Corp. on Ameritech's April 20, 1998 Submission" was served via facsimile, and mailed by U.S. first class mail, postage prepaid, to the parties listed below:

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